

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHAWN ENNIS,

Petitioner,

V.

JEFFREY A. UTTECHT,

Respondent.

CASE NO. C19-5786 BHS

ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION AND RE-
REFERRING CASE TO
MAGISTRATE JUDGE

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 5, Petitioner’s objections to the R&R, Dkt. 6, and Petitioner’s motion for leave to proceed *in forma pauperis* (“IFP”), Dkt. 7.

On August 26, 2019, Petitioner filed an application to proceed IFP. Dkt. 1. On August 27, 2019, the Clerk of Court sent Petitioner a letter notifying him that he had failed to submit the proper IFP application. Dkt. 2. Petitioner subsequently submitted the proper form but failed to sign the certification section and complete the application. Dkts. 3, 4. The Clerk of Court sent Petitioner a letter via the CM/ECF system notifying him of this deficiency (“second IFP letter”) and warning him that his action may be dismissed if he failed to submit a complete IFP application by October 11, 2019. Dkt. 4.

1 Petitioner did not respond to the second IFP letter. On October 28, 2019, Judge
2 Christel issued the R&R recommending dismissal without prejudice based on Petitioner's
3 failure to prosecute this action. Dkt. 5. On November 5, 2019, Petitioner filed objections.
4 Dkt. 6. Petitioner asserts that he never received the second IFP letter notifying him that
5 his IFP application was incomplete. *Id.* Petitioner requests that his case continue. *Id.*

6 The district judge must determine de novo any part of the magistrate judge's
7 disposition that has been properly objected to. The district judge may accept, reject, or
8 modify the recommended disposition; receive further evidence; or return the matter to the
9 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

10 In this case, although Petitioner is registered in the CM/ECF system as a prisoner
11 e-filer, the Court accepts his assertion that he did not receive the second IFP letter
12 notifying him of the deficiency in his application. Moreover, Petitioner has now
13 submitted a third IFP application which appears complete. Dkt. 7.

14 Therefore, the Court having considered the R&R, Petitioner's objections, and the
15 remaining record, does hereby find and order as follows:

16 (1) The R&R is **DECLINED**; and
17 (2) The matter is **RE-REFERRED** to Judge Christel for further proceedings.

18 Dated this 3rd day of January, 2020.

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BENJAMIN H. SETTLE
22 United States District Judge